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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

JOSE ISAIAS CABRERA,

Plaintiff

v.

NAPHCARE, et al.,

Defendants

Case No.: 3:19-cv-00200-MMD-CSD

**Report & Recommendation of  
United States Magistrate Judge**

Re: ECF No. 52

This Report and Recommendation is made to the Honorable Miranda M. Du, Chief United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Before the court is Defendants' motion to dismiss as a result of Plaintiff's failure to comply with the court's order regarding service. (ECF No. 52.) Plaintiff did not file a response.

After a thorough review, it is recommended that the motion be granted, and this action be dismissed without prejudice for lack of proper service.

Plaintiff is incarcerated within the Federal Bureau of Prisons. However, the events giving rise to this action took place while Plaintiff was a detainee at the Washoe County Detention Facility (WCDF). Plaintiff filed a pro se civil rights action under 42 U.S.C. § 1983. The court screened his amended complaint and allowed him to proceed with a Fourteenth Amendment inadequate medical care claim against defendants Kocijanski, Snidow, and Schultz. (ECF No. 21.)

Defendants previously filed a motion to dismiss on grounds that they were not properly served, and Plaintiff's claim was barred by the statute of limitations. (ECF No. 25.) Plaintiff

1 opposed the motion. (ECF No. 36.) The motion to dismiss was denied. (ECF Nos. 41, 45.) With  
2 regard to the service issue, the court found that the Defendants had not been properly served.  
3 However, the court gave Plaintiff an extension of time, until June 16, 2022, to properly serve the  
4 Defendants. Plaintiff was cautioned that a failure to timely complete proper service would result  
5 in dismissal without prejudice of this action. (ECF Nos. 41, 45.)

6 On May 23, 2022, the U.S. Marshal returned an unexecuted summons for each  
7 Defendant. (ECF Nos. 49, 50, 51.) To date, Defendants have not been properly served, and  
8 Plaintiff has not filed a response to Defendants' motion to dismiss.

9 As such, this action should be dismissed without prejudice as a result of Plaintiff's failure  
10 to timely and properly complete service.

#### 11 **RECOMMENDATION**

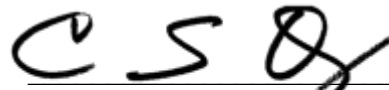
12 IT IS HEREBY RECOMMENDED that the District Judge enter an order **GRANTING**  
13 Defendants' motion to dismiss (ECF No. 52) and **DISMISSING** this action **WITHOUT**  
14 **PREJUDICE** as a result of Plaintiff's failure to timely and properly complete service.

15 The parties should be aware of the following:

16 1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to  
17 this Report and Recommendation within fourteen days of being served with a copy of the Report  
18 and Recommendation. These objections should be titled "Objections to Magistrate Judge's  
19 Report and Recommendation" and should be accompanied by points and authorities for  
20 consideration by the district judge.

1           2. That this Report and Recommendation is not an appealable order and that any notice of  
2 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed  
3 until entry of judgment by the district court.

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5 Dated: November 7, 2022

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7 Craig S. Denney  
8 United States Magistrate Judge  
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